IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 406 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KHOKHAR MAHOMMADKHAN KALEKHAN

Versus

SUB DIVISIONAL MAGISTRATE

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Appearance:

MR SB BRAHMBHATT for Petitioner

MR SAMIR DAVE, APP for Respondent No. 1, 2

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 11/01/2001

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. Challenge has been made by petitioner by this petition to the order of the respondent of externment of

the petitioner from six Districts.

#. Manifold contentions are raised by the learned counsel for the petitioner challenging the validity of that order but as this petition deserves to be allowed only on the ground that the petitioner has not been given opportunity of hearing by the authority considering the representation against the notice, all other points need not be mentioned and gone into.

#. It is not in dispute that the matter was fixed on 17.1.2000 for hearing. On that date, a call was given for strike by the advocates from all over India against amendment of C.P.C. As a result of that call, the advocate for the petitioner was not present. The petitioner was also not present. The absence of the petitioner is justified as when he engaged the advocate, it is expected from the advocate to remain present and make submissions. The petitioner was not in a position to compel the advocate to remain present. He is a helpless litigant who has no control over the advocate where they desire to remain on strike. But only on this ground, if this right of hearing is denied to the petitioner, it will result in deprival of his valuable right to make submissions in the matter. It may be a fault of the advocate but not of the petitioner and for which he cannot be punished.

#. In the result, this petition succeeds and the orders of externment dated 17.1.2000 and the order dated 14.3.2000 dismissing the appeal, are quashed and set aside. The Sub Divisional Magistrate, Mehsana, is directed to decide the matter afresh after giving notice and opportunity of hearing to the petitioner. This has to be done by him, if he so desires, within a period of one month from the date of receipt of writ of this order. Rule is made absolute accordingly with no order as to costs.

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(sunil)